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12 ConocoPhillips Company

13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION
16

17 HOUTAN PETROLEUM, INC.)

18 Plaintiff,)

19 vs.)

20 CONOCOPHILLIPS COMPANY, a Texas)
21 corporation and DOES 1 through 10,)
22 Inclusive)

23 Defendants.)

Case No. 3:07-cv-5627

DEFENDANT CONOCOPHILLIPS
COMPANY'S ANSWER AND
COUNTERCLAIMS FOR:

(1) BREACH OF CONTRACT;
(2) CONVERSION; AND
(3) UNJUST ENRICHMENT

JURY TRIAL DEMANDED

24 Defendant and Counter-Plaintiff ConocoPhillips Company ("ConocoPhillips")
25 hereby answers the Complaint of Plaintiff Houtan Petroleum, Inc. ("Houtan Petroleum") and
26 asserts the counterclaims set forth herein.

27 **CONOCOPHILLIPS' ANSWER TO THE COMPLAINT**

28 **PRELIMINARY ALLEGATIONS**

1. ConocoPhillips is without information or knowledge sufficient to form a
belief as to the truth of the allegations of paragraph 1 and on that basis denies them.

2. ConocoPhillips admits the allegations of paragraph 2.

3. ConocoPhillips is without information or knowledge sufficient to form a
belief as to the truth of the allegations of paragraph 3 and on that basis denies them.

4. ConocoPhillips denies the allegations of paragraph 4.

1 5. ConocoPhillips denies the allegations of paragraph 5.

2 6. ConocoPhillips denies that it acted “jointly and/or severally” with any
3 other defendant and therefore denies the allegations of paragraph 6.

4 JURISDICTION

5 7. ConocoPhillips denies the allegations of paragraph 7.

6 8. ConocoPhillips denies the allegations of paragraph 8.

7 VENUE

8 9. ConocoPhillips admits that venue is appropriate in this district.

9 GENERAL ALLEGATIONS

10 10. ConocoPhillips denies the allegations of paragraph 10.

11 11. ConocoPhillips admits that it leased the subject property and subleased
12 such property to Houtan Petroleum at certain times relevant to this action, but otherwise denies
13 the allegations of paragraph 11.

14 12. ConocoPhillips admits that at certain times relevant to this action Houtan
15 Petroleum subleased the subject property for the purpose of operating a Union 76 branded motor
16 fuel filling station, but otherwise denies the allegations of paragraph 12.

17 13. ConocoPhillips admits that Houtan Petroleum and ConocoPhillips were
18 previously “in a franchise relationship,” but otherwise denies the allegations of paragraph 13.

19 14. ConocoPhillips denies the allegations of paragraph 14.

20 15. ConocoPhillips denies the allegation of paragraph 15 that “Plaintiff’s
21 franchise agreement was not due to expire until August 31, 2010.” ConocoPhillips admits the
22 remaining allegations of paragraph 15, but avers that the notice referred to therein was not the
23 first notice of termination it provided to Houtan Petroleum.

24 16. ConocoPhillips admits the allegations of paragraph 16.

25 17. ConocoPhillips denies the allegations of paragraph 17.

26 18. ConocoPhillips is without information or knowledge sufficient to form a
27 belief as to the truth of the allegations of paragraph 18 and on that basis denies them.

28 19. ConocoPhillips denies the allegations of paragraph 19.

1 20. ConocoPhillips denies the allegations of paragraph 20.

2 21. ConocoPhillips denies the allegations of paragraph 21, and specifically
3 denies that Houtan Petroleum requested a bona fide offer in accordance with the requirements of
4 the PMPA.

5 22. ConocoPhillips admits the allegations of paragraph 22.

6 23. ConocoPhillips denies the allegations of paragraph 23.

7 24. ConocoPhillips admits the allegations of paragraph 24.

8 25. ConocoPhillips admits that it ceased delivering fuel to the station and
9 processing credit card transactions at the station on or about October 31, 2007. ConocoPhillips
10 denies the remaining allegations of paragraph 25.

11 26. ConocoPhillips denies the allegation that Houtan Petroleum “has therefore
12 been forced to file the instant lawsuit. . . .” ConocoPhillips is without information or knowledge
13 sufficient to form a belief as to the truth of the remaining allegations of paragraph 26 and on that
14 basis denies them.

15 27. ConocoPhillips denies the allegations of paragraph 27.

16 **FIRST CLAIM FOR RELIEF**

17 (For Violations of the Petroleum Marketing Practices Act, 15 U.S.C. § 2801, et seq.)

18 28. ConocoPhillips incorporates and repleads its responses to paragraphs 1
19 through 27 as though fully set forth herein.

20 29. ConocoPhillips admits the allegations of paragraph 29.

21 30. ConocoPhillips denies the allegations of paragraph 30.

22 31. ConocoPhillips denies the allegations of paragraph 31.

23 32. ConocoPhillips denies the allegations of paragraph 32, and specifically
24 denies that it “furnish[ed] its notification of termination less than 90 days prior to the effective
25 date of termination.”

26 33. ConocoPhillips denies the allegations of paragraph 33, and specifically
27 denies that it failed to comply with the PMPA.

28 34. ConocoPhillips denies the allegations of paragraph 34.

1 35. ConocoPhillips denies the allegations of paragraph 35.

2 36. ConocoPhillips denies the allegations of paragraph 36, and specifically
3 denies that it “fail[ed] to comply with the express language of the PMPA.”

4 37. ConocoPhillips denies the allegations of paragraph 37.

5 38. ConocoPhillips denies the allegations of paragraph 38.

6 39. ConocoPhillips denies the allegations of paragraph 39.

7 40. ConocoPhillips denies the allegations of paragraph 40.

8 41. ConocoPhillips denies the allegations of paragraph 41, and specifically
9 denies that it has violated the PMPA.

10 42. ConocoPhillips denies the allegations of paragraph 42.

11 43. ConocoPhillips denies the allegations of paragraph 43, and specifically
12 denies that it has violated or “willful[ly] disregard[ed] . . . the requirements of the PMPA and the
13 rights of Plaintiff.”

14 44. ConocoPhillips denies the allegations of paragraph 44.

15 **SECOND CLAIM FOR RELIEF**

16 (For Declaratory Relief)

17 45. ConocoPhillips incorporates and repleads its responses to paragraphs 1
18 through 44 as though fully set forth herein.

19 46. ConocoPhillips denies the allegations of paragraph 46.

20 47. ConocoPhillips admits that Houtan Petroleum seeks a declaration but
21 denies that such is appropriate.

22 **AFFIRMATIVE DEFENSES**

23 **FIRST DEFENSE**

24 48. As a separate and additional defense, ConocoPhillips avers that the
25 Complaint and each purported claim for relief contained therein fails to state facts sufficient to
26 constitute a claim upon which relief can be granted.

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1 SECOND DEFENSE

2 49. As a separate and additional defense, ConocoPhillips is informed and
3 believes, and thereon avers, that Houtan Petroleum's claims are barred by the equitable defense
4 of laches.

5 THIRD DEFENSE

6 50. As a separate and additional defense, ConocoPhillips is informed and
7 believes, and thereon avers, that Houtan Petroleum's claims are barred by the equitable defense
8 of unclean hands.

9 FOURTH DEFENSE

10 51. As a separate and additional defense, ConocoPhillips is informed and
11 believes, and thereon avers, that Houtan Petroleum's claims are barred by the equitable defense
12 of equitable estoppel.

13 FIFTH DEFENSE

14 52. As a separate and additional defense, ConocoPhillips is informed and
15 believes, and thereon avers, that Houtan Petroleum has waived any and all claims that it may
16 have or have had against ConocoPhillips.

17 SIXTH DEFENSE

18 53. As a separate and additional defense, ConocoPhillips is informed and
19 believes, and thereon avers, that Houtan Petroleum was careless and negligent with respect to the
20 matters alleged in its Complaint, and said carelessness and negligence proximately caused or
21 contributed to its damages, if any.

22 SEVENTH DEFENSE

23 54. As a separate and additional defense, ConocoPhillips is informed and
24 believes, and thereon avers, that Houtan Petroleum failed to mitigate its damages, if any.

25 EIGHTH DEFENSE

26 55. As a separate and additional defense, ConocoPhillips avers that it at all
27 times complied with all applicable Federal and State statutes and regulations including, but not
28 limited to, 15 U.S.C. § 2801, et seq., which regulatory frame work occupies the field and

1 otherwise precludes Houtan Petroleum's non-PMPA claims, if any.

2 NINTH DEFENSE

3 56. As a separate and additional defense, ConocoPhillips avers that the
4 Complaint fails to allege facts sufficient to state a claim for exemplary or punitive damages, and
5 that an award of exemplary or punitive damages in this action would be unconstitutional.

6 TENTH DEFENSE

7 57. As a separate and additional defense, ConocoPhillips avers that Houtan
8 Petroleum's purported claims are rendered moot for the reason that Houtan Petroleum has no
9 intent to purchase the relevant equipment and improvements.

10 ELEVENTH DEFENSE

11 58. As a separate and additional defense, ConocoPhillips avers that Houtan
12 Petroleum's damage, if any, must be off-set by amounts owed by Houtan Petroleum to
13 ConocoPhillips.

14 WHEREFORE, ConocoPhillips prays for judgment on Houtan Petroleum's
15 Complaint as follows:

- 16 1. That Houtan Petroleum be awarded nothing in this action, and its
17 Complaint be dismissed with prejudice;
- 18 2. That judgment be entered in favor of ConocoPhillips on the Complaint;
- 19 3. That Houtan Petroleum's Complaint be adjudged frivolous pursuant to 15
20 U.S.C. § 2805(d)(3);
- 21 4. That ConocoPhillips be awarded costs of suit, including expert witness
22 fees, and attorneys' fees incurred herein pursuant to the relevant franchise
23 agreement and 15 U.S.C. § 2805(d)(3);
- 24 5. That ConocoPhillips be awarded costs of suit to the extent permitted by
25 law; and
- 26 6. For such other and further relief as the court may deem just and proper.

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1 **CONOCOPHILLIPS' COUNTERCLAIMS AGAINST HOUTAN PETROLEUM**

2 ConocoPhillips asserts counterclaims against Houtan Petroleum as follows.

3 **THE PARTIES**

4 59. ConocoPhillips is a Delaware corporation with its principal place of
5 business in Houston, Texas.

6 60. ConocoPhillips is informed and believes and thereon alleges that Houtan
7 Petroleum is a California corporation with its principal place of business in California. Houtan
8 Petroleum operates a gasoline service station at 101 East El Camino Real, Mountain View,
9 California, 94040 (the "Station").

10 **JURISDICTION**

11 61. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 as complete
12 diversity of citizenship exists and the amount in controversy is more than \$75,000, exclusive of
13 interest and costs.

14 62. This Court also has jurisdiction pursuant to 28 U.S.C. § 1367 and the
15 doctrine of supplemental jurisdiction as ConocoPhillips' counterclaims are so closely related to
16 the claims asserted by Houtan Petroleum that they form part of the same case or controversy.

17 63. This Court has personal jurisdiction over Houtan Petroleum as it has its
18 principal place of business and does business within this judicial district and has committed and
19 is committing the acts alleged herein within this judicial district. In addition, Houtan Petroleum
20 has consented to the jurisdiction of this Court by filing its Complaint in this action in this Court.

21 **VENUE**

22 64. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 as a
23 substantial part of the events and omissions giving rise to this action occurred within this district.

24 **GENERAL ALLEGATIONS**

25 65. ConocoPhillips formerly leased the real property on which the Station is
26 located (the "Station Property") from V.O. Limited ("V.O. Limited") through a lease agreement
27 (the "Ground Lease"). ConocoPhillips' predecessor and V.O. Limited's predecessor entered the
28 Ground Lease on August 13, 1965. The Ground Lease was for a term of 25 years, commencing

1 on March 1, 1966, and ending on February 28, 1991. A true and correct copy of the Ground
2 Lease is attached hereto as **Exhibit A**.

3 66. On or about October 20, 1987, ConocoPhillips' predecessor agreed to a
4 Modification of Lease (the "Modification") with V.O. Limited's predecessor. The Modification
5 extended the term of the Ground Lease to October 31, 2002, and granted ConocoPhillips'
6 predecessor an option to extend the Ground Lease for one additional five-year term.
7 ConocoPhillips exercised this option. The Ground Lease was not further renewed or extended,
8 and expired on October 31, 2007.

9 67. The Ground Lease entitled ConocoPhillips to use the Station Property "for
10 a motor vehicle service station and for such other related uses as Lessee, at its option, may
11 determine." (Ex. A at ¶ 6.) The Ground Lease also provided that "[l]essee shall have the right to
12 place and maintain thereon all structures, improvements and equipment which Lessee may desire
13 for such purposes and to remove the same and any structures, improvements or equipment
14 heretofore or hereafter placed upon said premises by Lessee or which have been purchased or
15 owned by Lessee, at any time during the term hereof or within ten (10) days after termination of
16 this lease." (*Id.*)

17 68. ConocoPhillips used the Station Property for a motor vehicle service
18 station and related uses, and did construct and place on the Station Property various structures,
19 improvements and equipment.

20 69. Prior to expiration of the Ground Lease, Houtan Petroleum operated the
21 Station as a ConocoPhillips franchisee under a succession of franchisee agreements. A true and
22 correct copy of the most recent of these agreements, titled Union 76 Dealer Station Lease and
23 Motor Fuel Supply Agreement (the "Franchise Agreement"), is attached hereto as **Exhibit B**.

24 70. Pursuant to the Franchise Agreement, ConocoPhillips subleased the
25 Station Property, including ConocoPhillips' structures, improvements and equipment located
26 thereon, to Houtan Petroleum. The Franchise Agreement also granted Houtan Petroleum the
27 right to use ConocoPhillips' Union 76 trademarks and trade dress (the "Union 76 marks") while
28 the Franchise Agreement was effective.

1 71. ConocoPhillips is informed and believes and thereon alleges that Houtan
 2 Petroleum executed the Franchise Agreement on or about July 6, 2007. At that time, both
 3 ConocoPhillips and Houtan Petroleum were aware that the Ground Lease was to expire on
 4 October 31, 2007, and that ConocoPhillips had no further right to renew or extend the Ground
 5 Lease. Indeed, several months prior to execution of the Franchise Agreement, ConocoPhillips
 6 advised Houtan Petroleum that there was a possibility the Ground Lease would expire and not be
 7 renewed upon its expiration date. ConocoPhillips further advised Houtan Petroleum that if such
 8 an expiration and non-renewal of the Ground Lease were to occur, ConocoPhillips would have
 9 no right to continue to sublease the Station Property to Houtan Petroleum and the Franchise
 10 Agreement would necessarily terminate.

11 72. Accordingly, the Franchise Agreement provided that "[t]he term of this
 12 Agreement commences on September 1, 2007 and expires on August 31, 2010 . . . provided,
 13 however, that . . . if CONOCOPHILLIPS' underlying lease expires, is cancelled or terminates for
 14 any reason on or prior to [August 31, 2010] . . . then this Agreement shall terminate consistent
 15 with the cancellation or termination of said underlying lease." (Ex. B at 3-4 (¶ 2(a)) (original
 16 emphasis removed).) In addition, Addendum 1 to the Franchise Agreement specifically
 17 provided, and Houtan Petroleum acknowledged and agreed, as follows:

18 There is a possibility that the term of the underlying lease to the Station
 19 might expire and not be renewed upon the underlying lease's expiration
 20 date. DEALER hereby acknowledges CONOCOPHILLIPS' disclosure to
 21 DEALER that this Agreement and the Station herein are subject to all the
 22 terms and conditions of an underlying lease held by CONOCOPHILLIPS
 23 in the property and premises, which underlying lease expires on October
 24 31, 2007 and that such underlying lease may expire and may not be
 25 renewed during the Term of this Agreement. Thereby, the DEALER is
 26 hereby on notice that this Agreement is hereby terminated on the date the
 27 underlying lease expires or on a prior date in the event
 28 CONOCOPHILLIPS' lessor terminates the underlying lease or the
 29 underlying lease otherwise requires early termination.

30 CONOCOPHILLIPS is under no obligation to seek an extension or
 31 renewal, or exercise any renewal options it may have, of such underlying
 32 lease, but may do so at its discretion.

33 (*Id.* at 54 (original emphasis).) ConocoPhillips is informed and believes and thereon alleges that

1 when Houtan Petroleum's president, Ed Hadad, executed the Franchise Agreement on July 6,
2 2007, he separately initialed this Addendum/notice of termination.

3 73. Although ConocoPhillips was under no contractual or other legal
4 obligation to secure an extension or renewal of the Ground Lease, it attempted to do so, so that
5 Houtan Petroleum could continue to operate the Station as a ConocoPhillips franchisee.
6 Beginning in 2004, and continuing through September 2007, ConocoPhillips attempted to engage
7 V.O. Limited in discussions or negotiations regarding an extension or renewal of the Ground
8 Lease.

9 74. V.O. Limited never provided a substantive response to ConocoPhillips and
10 eventually ceased responding to ConocoPhillips' communications. Accordingly, in September
11 2007, ConocoPhillips advised V.O. Limited that if V.O. Limited did not respond by September
12 21, 2007, to ConocoPhillips' request to extend the Ground Lease, ConocoPhillips would construe
13 such a silence as a rejection and refusal by V.O. Limited to extend the Ground Lease.

14 75. V.O. Limited did not provide any response to ConocoPhillips.
15 Accordingly, as the Ground Lease was to expire on October 31, 2007, and ConocoPhillips would
16 thereafter have no right to occupy or possess the Station Property, much less sublease the Station
17 Property to Houtan Petroleum, ConocoPhillips was left with no choice but to proceed with
18 termination of the Franchise Agreement pursuant to the express language of the Franchise
19 Agreement. ConocoPhillips sent Houtan Petroleum a notice confirming that due to the imminent
20 expiration of the Ground Lease, and ConocoPhillips' consequent loss of its right to grant
21 possession of the Station Property to Houtan Petroleum, the Franchise Agreement would
22 terminate on October 31, 2007, at 12:00 p.m., pursuant to the terms of the Franchise Agreement.

23 76. On or about October 18, 2007, Houtan Petroleum advised ConocoPhillips
24 for the first time that it had entered a lease with V.O. Limited for the Station Property, to
25 commence upon expiration of the Ground Lease. Also on October 18, Houtan Petroleum
26 requested, for the first time, that ConocoPhillips make it a bona fide offer to sell Houtan
27 Petroleum the structures, improvements and equipment that ConocoPhillips had placed on the
28 Station Property.

1 77. The Petroleum Marketing Practices Act, 15 U.S.C. § 2801, et seq.,
2 required that Houtan Petroleum request a “bona fide offer” within 30 days after receiving notice
3 of termination of the Franchise Agreement (i.e., the notice set forth in the Franchise Agreement
4 itself). As Houtan Petroleum failed to make a timely request for a “bona fide offer,”
5 ConocoPhillips was under no legal obligation to make such an offer. Nevertheless, on or about
6 October 22, 2007, ConocoPhillips made Houtan Petroleum a bona fide offer to sell all such
7 structures, improvements and equipment to Houtan Petroleum for \$340,000.00 (the “Bona Fide
8 Offer”). The Bona Fide Offer was based on an independent appraisal prepared by a licensed
9 third-party appraiser.

10 78. Houtan Petroleum declined to accept the Bona Fide Offer, and advised
11 ConocoPhillips that it believed that the Bona Fide Offer amount was more than the true value of
12 the structures, improvements and equipment located at the Station Property. ConocoPhillips
13 requested that Houtan Petroleum provide ConocoPhillips with any appraisal or alternative
14 evidence of valuation. Houtan Petroleum failed to do so prior to commencing this litigation.

15 79. The Franchise Agreement provides that “[u]pon expiration, termination,
16 nonrenrenewal or cancellation of this Agreement, for any reason, DEALER shall immediately cease
17 and discontinue the use of said Union 76 Marks or any marks or names confusingly similar
18 thereto in DEALER’s operations or in advertising and promotions and return to
19 CONOCOPHILLIPS all signs and advertising materials containing such Union 76 Marks.” (Ex.
20 D at 12 (¶ 10(d).) The Franchise Agreement further provides that “[a]t the expiration,
21 nonrenewal or earlier termination of this Agreement, DEALER shall yield immediate and
22 peaceable possession of the Station to CONOCOPHILLIPS. . . .” (*Id.* at 25 (¶ 32).)

23 80. ConocoPhillips attempted to remove its structures, improvements and
24 equipment from the Station Property prior to expiration of the Ground Lease. As ConocoPhillips
25 was required to remove all such structures, improvements and equipment from the Station
26 Property no later than 10 days after expiration of the Ground Lease, it was critical that
27 ConocoPhillips immediately commence removal operations. Houtan Petroleum, however,
28 refused to allow ConocoPhillips to access the Station Property for this purpose.

1 81. ConocoPhillips is informed and believes and thereon alleges that Houtan
2 Petroleum failed to discontinue its use of the Union 76 Marks as required by the Franchise
3 Agreement, but instead continued to operate the Station using the Union 76 Marks, without
4 ConocoPhillips' license or permission, until on or about November 20, 2007. Moreover,
5 ConocoPhillips is informed and believes and thereon alleges that Houtan Petroleum engaged in
6 the sale of non-ConocoPhillips gasoline using the Union 76 Marks.

7 82. ConocoPhillips advised Houtan Petroleum in writing that its use after
8 October 31, 2007, at 12:00 p.m., of the Union 76 Marks was improper, unlawful and in violation
9 of the Franchise Agreement and applicable law. In addition, ConocoPhillips attempted to
10 remove and/or conceal the Union 76 Marks. Houtan Petroleum, however, refused to cease using
11 the Union 76 Marks and interfered with and frustrated ConocoPhillips' efforts to conceal or
12 remove the Union 76 Marks from the Station. Houtan Petroleum did not permit ConocoPhillips
13 to remove or conceal the Union 76 Marks until on or about November 20, 2007.

14 83. Houtan Petroleum commenced this litigation on or about November 5,
15 2007. Houtan Petroleum applied for a temporary restraining order and preliminary injunction to
16 require, among other things, that ConocoPhillips not remove its structures, equipment and
17 improvements from the Station Property and that Houtan Petroleum be permitted to continue to
18 use this property pending the litigation. The Court initially entered a temporary restraining order
19 but thereafter denied preliminary injunctive relief.

20 84. After the Court denied preliminary injunctive relief, ConocoPhillips made
21 a number of alternative proposals by which Houtan Petroleum could have purchased or leased
22 ConocoPhillips' structures, equipment and improvements. ConocoPhillips has offered to enter
23 an interim, month-to-month lease by which Houtan Petroleum could lease the structures,
24 equipment and improvements for the duration of this litigation. Houtan Petroleum has rejected
25 all of ConocoPhillips' proposals. Accordingly, ConocoPhillips has advised Houtan Petroleum
26 that it intends to remove its structures, equipment and improvements from the Station Property.

27 85. Houtan Petroleum has advised ConocoPhillips that, notwithstanding the
28 Court's denial of injunctive relief and the expiration of the Franchise Agreement, it will not

1 permit ConocoPhillips to remove its structures, equipment and improvements from the Station
2 Property while the litigation is pending. Houtan Petroleum has further advised ConocoPhillips
3 that it will not pay any rent for the use of ConocoPhillips' structures, equipment and
4 improvements.

5 **FIRST CLAIM FOR RELIEF**

6 (Breach of Contract)

7 86. ConocoPhillips repleads and incorporates the allegations of paragraphs 59
8 through 85 as though fully set forth herein.

9 87. Houtan Petroleum has breached the Franchise Agreement by, *inter alia*,
10 failing to cease using the Union 76 Marks on October 31, 2007, as required, and failing to
11 surrender the Station Property to ConocoPhillips so that ConocoPhillips could remove its
12 structures, equipment and improvements from the Station Property.

13 88. ConocoPhillips has fully performed all of the conditions, covenants and
14 promises required to be performed on its part under the Franchise Agreement.

15 89. As a result of Houtan Petroleum's breaches, ConocoPhillips has been
16 damaged in an amount to be proven at trial.

17 **SECOND CLAIM FOR RELIEF**

18 (Conversion)

19 90. ConocoPhillips repleads and incorporates the allegations of paragraphs 59
20 through 89 as though fully set forth herein.

21 91. Houtan Petroleum's conduct as alleged herein, including without
22 limitation refusing to allow ConocoPhillips to remove its structures, improvements and
23 equipment from the Station Property, constitutes conversion of ConocoPhillips' property in that
24 Houtan Petroleum has wrongfully asserted dominion and control over ConocoPhillips' property
25 and has knowingly and unlawfully interfered with ConocoPhillips' legitimate rights in such
26 property.

27 92. As a direct and proximate result of such conversion by Houtan Petroleum,
28 ConocoPhillips has been damaged in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

93. ConocoPhillips pleads and incorporates the allegations of paragraphs 58 through 91 as though fully set forth herein.

94. Houtan Petroleum's conduct as alleged herein, including without limitation refusing to allow ConocoPhillips to remove its structures, improvements and equipment from the Station Property, has resulted in Houtan Petroleum's acquisition of a benefit which it may not justly retain.

95. Houtan Petroleum must therefore be required to return ConocoPhillips' property and further to pay over to ConocoPhillips the value of its improper use of ConocoPhillips' property as well as any amounts it has received as a result of its unjust retention of ConocoPhillips' property.

PRAYER FOR RELIEF

WHEREFORE, ConocoPhillips prays for judgment against Houtan Petroleum as follows:

1. For compensatory damages according to proof as pleaded above;
2. For punitive and exemplary damages;
3. For a writ of possession, preliminary and permanent injunctions, and such other provisional relief as may be necessary, authorizing ConocoPhillips to access and enter upon the Station Property and remove its structures, improvements and equipment;
4. For disgorgement and restitution of any amounts Houtan Petroleum has realized or received as a result of its improper retention of ConocoPhillips' property and for the value of Houtan Petroleum's use of such property;
4. For an award of ConocoPhillips' reasonable attorneys' fees under the Franchise Agreement and to the extent otherwise permitted by law;
5. For prejudgment interest;

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1 6. For ConocoPhillips' costs of suit; and

2 7. For such other and further relief as the court may deem just and proper.

3 Dated: January 18, 2008

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8 100 Pringle Avenue, Suite 500
9 Walnut Creek, CA 94596


10 By 
11 Attorneys for Defendant and Counter-
12 Plaintiff ConocoPhillips Company

DEMAND FOR JURY TRIAL

ConocoPhillips hereby demands a jury trial on all counterclaims so triable.

Dated: January 19 2008

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